IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10464 OF 2004

Shri Ramchandra Baburao Raut ... Petitioner

Vs.

Smt. Vimal Namdeorao Patil & Ors. ... Respondents

Mr. M.M. Sathaye for the petitioner.

Ms. Smita Gaidhani for respondents 1 to 3.

CORAM: SMT. RANJANA DESAI, J.

DATED: 22ND FEBRUARY, 2005.

P.C.:-

1. The petitioner is original defendant-tenant. The plaintiff filed a suit for eviction on the grounds of arrears of rent, non-user, erection of permanent structure without the landlords consent and acquisition of vacant possession of a suitable accommodation. The trial court dismissed the plaintiff's suit. However, the trial court came to a conclusion that defendant 1 had constructed a permanent structure in front of the suit property without the landlord's permission. The trial court has noted that the defendant has admitted that no written permission was sought by him from the plaintiff for the extension of the suit premises. It has further observed that testimony of PW-2 corroborates the version of the plaintiff on the point that the defendant had constructed the permanent structure near his room. Surprisingly, in spite of this clear finding, the trial

court did not pass the decree on that ground. The trial court also came to a conclusion that the defendant had admitted that he had acquired alternate accommodation. The trial court discussed the evidence in that behalf. It has observed that the defendant owns a house in Paresh Society and he has admitted that he has purchased a flat. But, the trial court has wrongly placed the burden of establishing that the said premises are not suitable for the tenant, on the tenant. The trial court wrongly did not pass the decree on this ground though it has recorded an affirmative finding on the question of acquisition of the alternate accommodation by the tenant. Similarly, the trial court has observed that the plaintiff had filed possession receipt on record. Therefore, it appears that the defendant had already handed over the suit property to the plaintiff. It appears that this is one of the circumstances which prevailed on the trial court in not passing the decree on the ground of permanent construction and acquisition of alternate accommodation. If at all the plaintiff had obtained possession then, there was no reason for the plaintiff to prosecute the litigation further and there was no need for the petitioner also to resist the plaintiff's suit.

2. The lower appellate court has rightly affirmed the trial court's findings that the defendant had carried out permanent construction on the suit premises without the permission of the plaintiff and that defendant has acquired alternate accommodation and passed a decree of

eviction. In my opinion, this concurrent finding of fact is unassailable and does not merit interference by this court.

3. The learned counsel for the petitioner, however, strenuously contended that in the plaint, the suit property is described as Room No.3 admeasuring 10' x 10' in House No.142 at Depo Road, Opp. Chandanawadi at Mouje Deolali. However, the lower appellate court while dismissing the appeal has ordered the plaintiff to recover possession of the suit premises mentioned in the plaint along with structure constructed by the defendant. The learned counsel for the defendant submitted that the lower appellate court could not have travelled beyond the relief claimed by the plaintiff and granted him something more. This submission must be rejected. In this connection the learned counsel for the respondent has relied on the judgment of this court in **Shridhar Govind Natu v. Ankush Krishnaji Sawant, 33 Bom. R.C. 1986** where this court was dealing with some what similar contention.

4. This court held that under section 5(8)(b)(i) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (for short "the Rent Act"), premises mean any building or portion of a building let or given on licence separately (otherwise than a farm building) including the garden, grounds, garages and out houses, if any, appurtenant to such building or part of a building.

Under section 13(1)(b) of the Rent Act, a landlord shall be entitled to recover possession of any premises if the court is satisfied that the tenant has without the landlord's consent given in writing erected on the premises any permanent structure. This court observed that the expression 'on the premises' used in section 13(1)(b) of the Rent Act should mean the premises let out to any tenant in addition to the appurtenant and such other space of which he is taking beneficial enjoyment for the proper use of the rented premises. It will be open for the plaintiff in a particular case to prove that the structure made on such nearby or adjoining premises appurtenant to the tenanted premises as being used as part of the beneficial enjoyment of the tenanted room itself can be said to be the structure on the premises itself within the meaning of section 13(1)(b) of the Rent Act.

5. In my opinion, the ratio of this judgment squarely applies to the present case. Both the courts have held that the tenant has, without permission of the plaintiff, constructed a room in front of the plaintiff's house. The lower appellate court, therefore, rightly directed the defendant to handover the possession of the suit premises along with the illegally constructed premises.

Hence, the writ petition is rejected.

6. At this stage, the learned counsel for the petitioner seeks stay of the operation of the impugned decree. In

the circumstances of the case, the operation of the impugned decree dated 22/9/2004 passed by the 4th Adhoc Addl. District Judge, Nashik, is stayed for a period of six weeks from today.

7. All concerned to act on ordinary copy of this order duly authenticated.

(SMT. RANJANA DESAI, J.)